

Supreme Court of Kentucky

**IN RE:
ORDER AMENDING
RULES OF CRIMINAL PROCEDURE (RCr)
RULES OF CIVIL PROCEDURE (CR)
FAMILY COURT RULES OF PROCEDURE AND PRACTICE (FCRPP)**

2010-09

The following rules' amendments shall become effective January 1, 2011.

A. AMENDMENTS FOR THE RULES OF CRIMINAL PROCEDURE (RCr)

I. RCr 5.22(2) Procedure upon failure to indict

Section (2) of RCr 5.22 shall read:

(2) Final adjournment of a grand jury without its having indicted a defendant who has been held to answer, pursuant to RCr 3.14(1), shall effect the defendant's discharge from custody or, if the defendant is free on bail that has not been forfeited, shall exonerate the bail unless the grand jury refers the matter to the next grand jury, which referral must be in writing to the circuit court. Money or bonds deposited in lieu of bail shall be refunded upon such discharge. In any event, a defendant who has been held to answer, pursuant to RCr 3.14(1), for longer than 60 days without having been indicted shall be entitled to a discharge from custody.

II. RCr 7.24(1) and (3)(A)(i) Discovery and inspection

Sections (1) and (3)(A)(i) to RCr 7.24 shall read:

(1) Upon written request by the defense, the attorney for the Commonwealth shall disclose the substance, including time, date, and place, of any oral incriminating statement known by the attorney for the Commonwealth to have been made by a defendant to any witness, and to permit the defendant to inspect and copy or photograph any relevant (a) written or recorded statements or confessions made by the defendant, or copies thereof, that are known by the attorney for the Commonwealth to be in the possession, custody, or control of the Commonwealth, and (b) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case,

or copies thereof, that are known by the attorney for the Commonwealth to be in the possession, custody or control of the Commonwealth, and (c) upon written request by the defense, the attorney for the Commonwealth shall furnish to the defendant a written summary of any expert testimony that the Commonwealth intends to introduce at trial. This summary must identify the witness and describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

(3)(A)(i) If the defendant requests disclosure under RCr 7.24(1)(b), upon compliance to such request by the Commonwealth, and upon written request of the Commonwealth, the defendant, subject to objection for cause, shall permit the Commonwealth to inspect, copy, or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody, or control of the defendant, which the defendant intends to introduce as evidence or which were prepared by a witness whom the defendant intends to call at trial when the results or reports relate to the witness's testimony. If the defendant requests disclosure of the Commonwealth's experts under RCr 7.24(1)(c), then upon written request by the attorney for the Commonwealth, the defense shall furnish to the attorney for the Commonwealth a written summary of any expert testimony that the defense intends to introduce at trial. This summary must identify the witness and describe that witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

III. RCr 9.32 Alternate Jurors

RCr 9.32 shall read:

(1) In General. The court may impanel alternate jurors to hear a case. Should it become necessary to excuse a juror, the trial shall proceed unless the number of jurors is reduced below the number required by law. If the membership of the jury exceeds the number required by law, the alternate juror or jurors may be designated by agreement of the parties and the Court; otherwise, immediately before the jury retires to consider its verdict, the clerk, in open court, shall by random selection reduce the jury to the number required by law.

(2) Recalling Alternate Jurors. The court may require alternate jurors to remain sworn and subject to recall after the jury retires to deliberate provided they have been properly admonished. If recalled, the court must ensure that an alternate has complied with the admonition. If an alternate is recalled after deliberations have begun, the court must instruct the jury to begin its deliberations anew. Alternate jurors shall be recalled in the same sequence in which they were excused.

IV. RCr 9.50 Exclusion of infants from courtroom

RCr 9.50 shall read:

In any criminal proceeding in which there will be evidence or testimony presented of a violent or sexual nature, the judge may exclude from the courtroom, and from the hearing of the testimony and arguments, any or all children under the age of sixteen years.

V. RCr 12.04(3) When and how taken

Section (3) of RCr 12.04 shall read:

(3) The time within which an appeal may be taken shall be thirty (30) days after the date of entry of the judgment or order from which it is taken, subject to Rule 12.06, but if a timely motion has been made for a new trial an appeal from a judgment of conviction may be taken within thirty (30) days after the date of entry of the order denying the motion; provided, however, that in the case of a motion for new trial made later than five (5) days after return of the verdict, the appeal must be from the order overruling or denying the motion, and the review on appeal shall be limited to the grounds timely raised by the motion as provided by Rule 10.06. If a motion to proceed in forma pauperis is denied, the party shall have thirty (30) days within which to pay the filing fee or to appeal the denial to the appropriate appellate court.

VI. RCr 12.04(5) When and how taken

Section (5) of RCr 12.04 shall read:

(5) If an inmate files a notice of appeal in a criminal case, the notice shall be considered filed if its envelope is officially marked as having been deposited in the institution's internal mail system on or before the last day for filing with sufficient First Class postage prepaid.

B. AMENDMENTS TO THE RULES OF CIVIL PROCEDURE (CR)

I. CR 5.02 Service; how made

CR 5.02 shall read:

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, which shall not include a warning order attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the last known address of such person; or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means handing it to the attorney or to a party; or leaving it at the office of the attorney or party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending it by electronic means if the attorney or a party consents in writing. The attorney or a party consents to accept electronic service by filing and serving a notice that the attorney or party accepts electronic service. The notice must include the electronic notification address at which the attorney or party agrees to accept service. Service is complete upon mailing or electronic transmission, but electronic transmission is not effective if the serving party learns that it did not reach the person to be served.

II. CR 5.03 Service; proof of

CR 5.03 shall read:

Whenever any pleading or other paper is served under Rules 5.01 and 5.02, proof of the time and manner of such service shall be filed before action is to be taken thereon by the court or the parties. Proof may be by certificate of a member of the bar of the court or by affidavit of the person who served the papers, or by any other proof satisfactory to the court. Such certificate or affidavit shall identify by name the persons so served. Proof of electronic service must state the electronic notification address of the person served and that the document was served electronically.

III. CR 5.05 (4) Filing

Section (4) of CR 5.05 shall read:

(4) If accompanied by a motion for leave to proceed in forma pauperis and a supporting affidavit, and made in good faith, any matter to be filed under these rules, including appeals, shall be considered filed on the date it is

tendered. If the motion to proceed in forma pauperis is denied, the moving party shall then have thirty (30) days to pay any required fees or costs or to appeal the decision. If the moving party fails to pay the required fees or costs, or to seek review, the matter shall be treated as though not timely filed. The time for certifying the record on appeal under CR 73.08 shall run from the date the motion to proceed in forma pauperis is granted.

IV. CR 7.03(1)(b) Privacy Protection for Filings Made with the Court

Section (1) of CR 7.03 shall read:

(1) Unless the court orders otherwise, in a civil filing with the court, excluding domestic violence matters, that contains certain personal data, including an individual's social-security number or taxpayer-identification number, or birth date, or a financial-account number, an attorney or party making the filing must redact the document so the following information cannot be read:

- (a) the digits of the social-security number or taxpayer-identification number;
- (b) the month and day of the individual's birth; and
- (c) the digits of the financial-account number.

Redaction may be made by any method, including but not limited to replacing the identifiers with neutral placeholders or covering the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

V. CR 23.03 Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions

CR 23.03 shall read:

(1) At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(2) An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under CR 23.07.

(3) An order that grants or denies class certification may be altered or amended before final judgment.

(4) If an appeal is taken from the Certification Order, as authorized by CR 23.06, notice shall not be given until a final non-appealable order has decided the issue. If no appeal is taken the court, after 11 days from the entry of its Certification Order, shall give notice as follows:

(a) For any class certified under CR 23.02(a) or 23.02(b), the court may direct appropriate notice to the class.

(b) For any class certified under CR 23.02(c), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion by a specified date;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment, whether favorable or not, on members under CR 23.03.

(5) Whether or not favorable to the class, the judgment in a class action must:

(a) for any class certified under CR 23.02(a) or (b) include and describe those whom the court finds to be class members; and

(b) for any class certified under CR 23.02(c) include and specify or describe those to whom the CR 23.02(c) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(6) When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(7) When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

VI. CR 23.04 Orders in conduct of actions

CR 23.04 shall read:

(1) In conducting an action under CR 23.03, the court may issue orders that:

(a) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(b) require – to protect certified class members and fairly conduct the action – giving appropriate notice to some or all class members of:

(i) any step in the action
(ii) the proposed extent of the judgment; or
(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into this action.

(c) impose conditions on the representative parties or on intervenors;

(d) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(e) deal with similar procedural matters.

(2) An order under CR 23.04(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

VII. CR 23.05 Dismissal or compromise

CR 23.05 shall read:

The claims, issues, or defenses of a certified class may be settled, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under CR 23.02(c), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (5); the objection may be withdrawn only with the court's approval upon a showing of good cause.

VIII. CR 23.06 Appeals

CR 23.06 shall read:

An order granting or denying class action certification is appealable within 10 days after the order is entered. An appeal does not stay proceedings in the circuit court unless the circuit judge or the Court of Appeals so orders. The matter shall be expedited in the appellate courts.

IX. CR 23.07 Class counsel

CR 23.07 shall read:

(1) Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

- (a) must consider:
 - (i) the work counsel has done in identifying or investigating potential claims in the action;
 - (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
 - (iii) counsel's knowledge of the applicable law; and
 - (iv) the resources that counsel will commit to representing the class;
- (b) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;
- (c) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;
- (d) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under CR 23.08; and
- (e) may make further orders in connection with the appointment.

(2) When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under CR 23.07(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Class counsel must fairly and adequately represent the interests of the class.

X. CR 23.08 Attorney's fees and nontaxable costs

CR 23.08 shall read:

In a certified class action the court shall approve or award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion to be heard at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under CR 52.01.

(4) The court may refer issues related to the amount of the award to a Commissioner, as provided in CR 53.

XI. CR 26.03 (2) Protective orders

Section (2) of CR 26.03 shall read:

(2) If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37.01(d) apply to the award of expenses incurred in relation to the motion.

XII. CR 53 Master Commissioners of Circuit Courts

The title of CR 53 shall read:

Master Commissioners of Circuit Courts

XIII. CR 53.01 Appointments; deputies

CR 53.01 shall read:

Each circuit court may appoint a master commissioner and a receiver as authorized by statute. Other master commissioners, deputy master commissioners, receivers, and their assistants may be appointed only upon

express authority of the Chief Justice. A master commissioner or deputy master commissioner shall hold no other public office of the Court of Justice except a master commissioner or deputy master commissioner may also serve as a trial commissioner for the district court pursuant to SCR 5.010, or a domestic relations commissioner as approved by the Chief Justice. Master commissioners and deputy master commissioners shall be qualified as attorneys.

XIV. CR 53.02 Judicial sales; settlements; receiverships; qualifications of commissioner

CR 53.02 shall read:

(1) Judicial sales under order or judgment of the circuit court may be executed and accounts of estates may be settled by a master commissioner under such terms and conditions as are specified by the circuit court either in its order or judgment or by rule. A master commissioner may act as a receiver under terms and conditions likewise specified by the circuit court. A master commissioner may draft and execute such instruments as are necessary to complete any responsibility. A master commissioner performing any of these functions and appointed after December 31, 1977, shall be qualified as an attorney or experienced as a fiduciary. The master commissioner shall serve notice of the date, time and place of the judicial sale upon every party who is not in default for failure to appear.

(2) Civil matters pertaining to bills of discovery of assets of judgment debtors and claim and delivery may be referred to a master commissioner who shall be qualified as an attorney.

(3) All other references to master commissioners shall be warranted only in special cases. Cases may be regarded as special due to complexity of issues, damages which are difficult to calculate, a multiplicity of claims the priority of which must be established, matters of account involving complex or numerous transactions, or similar exceptional circumstances. A master commissioner performing this function shall be qualified as an attorney.

XV. CR 53.03 Powers

CR 53.03 shall read:

An order of reference to a master commissioner or local rules of court may specify or limit his or her powers and may direct him or her to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master commissioner's report. Subject to the specifications and limitations stated in the order or local rules of court, the master commissioner has and shall exercise the power to regulate all

proceedings in every hearing before him or her and to do all acts and take all measures necessary or proper for the efficient performance of his or her duties under the order or local rules of court. He or she may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He or she may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself or herself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master commissioner shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43.10 for a court sitting without a jury.

XVI. CR 53.04 Proceedings

CR 53.04 shall read:

(1) Meetings.

When a reference is made other than automatic references provided by local rules of court, the clerk shall forthwith furnish the master commissioner with a copy of the order of reference. Upon receipt thereof unless he or she otherwise provides, the master commissioner shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master commissioner to proceed with all reasonable diligence. Either party, on notice to the parties and master commissioner, may apply to the court for an order requiring the commissioner to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master commissioner may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses.

The parties may procure the attendance of witnesses before the master commissioner by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of accounts.

When matters of accounting are in issue before the master commissioner, he or she may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of

the items thus submitted or upon a showing that the form of statement is insufficient, the master commissioner may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he or she directs.

XVII. CR 53.05 Report

CR 53.05 shall read:

(1) Contents and filing.

The master commissioner shall prepare a report of recommendations to the court upon the matters submitted by the order of reference or local rules of court and, if required to make findings of fact and conclusions of law, the master commissioner shall set them forth in the report and shall file the report and sufficient copies for all parties with the clerk of the court. The clerk shall forthwith serve the report and notice of the filing upon all parties who have appeared in the action. A transcript of reported proceedings may be ordered by any party at that party's expense. In the case of proceedings recorded on video the untranscribed recording shall constitute the official record.

(2) Action on report.

Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in CR 6.04. The court after hearing may adopt the report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions.

(3) Stipulation as to findings.

The effect of a master commissioner's report is the same whether or not the parties have consented to the reference, but, when the parties stipulate that a master commissioner's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(4) Draft report.

Before filing his report a master commissioner may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(5) Report as security.

The master commissioner shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master commissioner is entitled to a writ of execution against the delinquent party.

(6) The report shall be promptly acted upon by the court.

XVIII. CR 53.06 Compensation

CR 53.06 shall read:

The compensation of master commissioners shall be by fee charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody or control of the circuit court. Deputies and other assistants of master commissioners shall be compensated and office expenses shall be paid from the fees of the office. Rates of compensation shall be in accordance with a schedule or schedules established by the Supreme Court.

XIX. CR 53.07 Limit on compensation

CR 53.07 shall read:

All master commissioners shall be limited in their total personal compensation derived from fees to not more than \$48,000 per annum, unless approved by the Chief Justice. Fees in excess of the personal compensation of the commissioner and office expenses and salaries shall be remitted as provided in Rule 53.09, however, anticipated three (3) months expenses may be retained.

XX. CR 53.08 Accounting

CR 53.08 shall read:

(1) Each master commissioner shall account to the circuit judge under whose direction he or she is acting, for all amounts received and distributed, for all proceeds of sales disbursed, and for all fees collected. These accounts shall be in the manner directed by the circuit judge who shall approve the accounts by his or her signature. The master commissioner shall file the approved accounts with the circuit clerk who shall include them with the applicable case file. Each master commissioner shall maintain a current record, kept in the office of the circuit clerk, or in the office of the master commissioner if the Chief Circuit Judge so directs, of each case in which a fee has been received.

(2) Each master commissioner shall annually provide to the Administrative Office of the Courts a complete accounting for all amounts received and

distributed and for all fees collected in accordance with the Rules of Administrative Procedure of the Court of Justice, Part IV. Excess fees referred to in Rule 53.07 shall be remitted with the report and may be added to the existing surplus. A copy of this report shall at the same time be provided to the finance and administration cabinet.

XXI. CR 73.02 (1)(b) When and how taken

Sub-section (b) of section (1) of CR 73.02 shall read:

(1)(b) If an appeal or cross-appeal is from an order or judgment of the circuit court, the filing fee required by Rule 76.42(2)(a)(i) or (ii) shall be paid to the clerk of the circuit court at the time the notice of appeal or cross-appeal is tendered, and the notice shall not be docketed or noted as filed until such payment is made. Motions to proceed in forma pauperis on such an appeal or cross-appeal must be addressed to the circuit court. If timely tendered and accompanied by a motion to proceed in forma pauperis supported by an affidavit, a notice of appeal or cross-appeal shall be considered timely but shall not be filed until the motion to proceed in forma pauperis is granted or, if denied, the filing fee is paid. If the motion to proceed in forma pauperis is denied, the party shall have 30 days within which to pay the filing fee or to appeal the denial to the appropriate appellate court. Time for further steps in the appeal or cross-appeal shall run from the date that the notice of appeal is filed upon payment of the filing fee or the granting of the motion to proceed in forma pauperis.

XXII. CR 75.07 (6) Record to be prepared and transmitted by clerk

Section (6) of CR 75.07 shall read:

(6) If the appeal is to the Court of Appeals or Supreme Court, the clerk of the circuit court or of the Court of Appeals in workers' compensation cases, or original proceedings pursuant to CR 76.36(7) shall immediately notify the clerk of the appellate court when the record has been completed and certified as required by this Rule, and shall simultaneously serve copies of such notification upon all parties to the appeal. Such notification shall indicate the name or names of counsel for the appellant. The clerk shall enter the fact and date of such notification in the docket of the case, and the date of such docket entry shall govern the time for perfecting the appeal.

XXIII. CR 76.02 (1) Perfecting appeals and cross-appeals

Section (1) of CR 76.02 shall read:

(1) To perfect an appeal from the circuit court the appellant shall: (a)(i) cause the clerk's notice required by CR 75.07(6) to be transmitted to the clerk of the appellate court or (ii) if the appeal is taken of a case recorded pursuant to CR

98(1), cause the clerk's notice required by paragraph CR 98(3)(c) to be transmitted to the clerk of the appellate court; and (b) file with the clerk of the appellate court the brief required by Rule 76.12.

XXIV. CR 76.12 (4)(g) Briefs

Sub-section (g) of section (4) of CR 76.12 shall read:

(g) *Form of citations.* All citations of Kentucky Statutes shall be made from the official edition of the Kentucky Revised Statutes and may be abbreviated "KRS." The citation of Kentucky cases reported after January 1, 1951, shall be in the following form for decisions of the Supreme Court and its predecessor court: Doe v. Roe, ___ S.W.2d ___ or ___ S.W.3d ___ (Ky. [date]), or for reported decisions of the present Court of Appeals, Doe v. Roe, ___ S.W.2d ___ or ___ S.W.3d ___ (Ky. App. [date]). Case names may be italicized or underlined.

XXV. CR 76.36 (7)(d), (e), (f), (g), (h), (i) and (j) Original proceedings in appellate court

Sub-sections (d), (e), (f), (g), (h), (i) and (j) of section (7) of CR 76.36 shall read:

(7) Appeals to the Supreme Court.

(d) When the appeal has been perfected and entered in the docket book the clerk of the Supreme Court shall forthwith mail notice of the date of such entry to the attorneys for the parties.

(e) To perfect a cross-appeal, within 30 days after the mailing of the clerk's notice mentioned in the preceding subparagraph (d) of this Rule 76.36(7), or within 30 days after expiration of the time allowed for the appellant to perfect the appeal, whichever is the sooner, the party taking the cross-appeal shall file with the clerk of the Supreme Court a brief setting forth the arguments for reversal or modification of the judgment or order from which the cross-appeal is taken and against the relief sought by the appellant.

(f) Briefs in response to an appeal or cross-appeal shall be required. Such briefs shall be filed in accord with the provisions of CR 76.12(2)(a) and (b).

Where an appeal is taken against a judge in the Court of Justice and concerns performance of an official act, the party appealing shall serve notice on the real party in interest as defined in this Rule, section (8), who shall then be required to file a brief on behalf of the judge against whom the appeal or cross-appeal is taken; provided, however, no attorney shall be required or permitted to file such a brief where to do so would conflict with the interest of his or her client.

(g) Ten (10) copies of the briefs shall be filed. Briefs need not be printed.

(h) The clerk of the Court of Appeals shall transmit all or any portion of the original record of the proceedings to the Supreme Court when so requested by the clerk of that court.

C. FAMILY COURT RULES OF PROCEDURE AND PRACTICE (FCRPP)

I. TITLE AND SCOPE OF RULES.

FCRPP 1. Title and Scope.

FCRPP 1 shall read:

- (1) Pursuant to KRS 403.130, these rules constitute a separate section of the civil rules and shall be known as the Kentucky Family Court Rules of Procedure and Practice. They may be cited as such, or by the abbreviation "FCRPP."
- (2) These Rules shall be applicable to the procedure and practice in all actions pertaining to dissolution of marriage; custody and support; visitation and timesharing; property division; maintenance; domestic violence; paternity; dependency; neglect or abuse; termination of parental rights; adoption; and status offenses, or any other matter exclusively within family law jurisdiction, except for any special statutory proceedings, which shall prevail over any inconsistent procedures set forth in these Rules.
- (3) Self represented litigants shall be held to knowledge of these rules the same as parties represented by counsel.
- (4) The Rules of Civil and Criminal Procedure shall apply to family law matters to the extent they are not inconsistent with these Rules.

II. DISSOLUTIONS AND PROPERTY DIVISION.

FCRPP 2. Preliminary Matters.

FCRPP 2 shall read:

(1) Original Pleadings.

All original pleadings and exhibits in a dissolution action shall be filed with the clerk of the court, as allowed by law. All original pleadings, motions, orders and exhibits shall include, but not be limited to, the following, if applicable:

- (a) A signed copy of the petition;
- (b) Proof of service;
- (c) A signed copy of the entry of appearance signed by the respondent;

- (d) A signed copy of the separation agreement subject to KRS 403.180(4)(b);
- (e) The final verified mandatory case disclosure;
- (f) A waiver of notice of final hearing and further proceedings;
- (g) A notarized deposition or interrogatories for proof of the allegations of the petition if done without a hearing;
- (h) A copy of a divorce education certificate;
- (i) A copy of a child support work sheet; and
- (j) A proposed Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage.

(2) Multiple Actions.

When actions concerning the same subject matter are filed in different circuits, the first action filed shall be the controlling action, subject to transfer by the court of that circuit on a motion for forum non conveniens or other appropriate legal grounds. A motion for transfer shall be filed prior to or with the response. On notice to the parties, the courts in both circuits may confer concerning the proper venue.

(3) Preliminary Mandatory Disclosure.

AOC-238, Preliminary Verified Disclosure Statement, shall be exchanged between the parties within 45 days of filing of the petition, and objections thereto shall be exchanged 20 days thereafter and shall not be filed in the record unless ordered by the court.

(4) Exchange of Information and Documents.

The parties shall sign and return specific releases for relevant information and documents unless objected to in writing. Such releases shall contain a provision directing that any information and/or documents provided in writing to the requesting counsel or pro se party shall simultaneously be transmitted to the other counsel or pro se party, at requesting party's expense. Upon objection, the requesting party may file a motion to compel.

(5) Status Quo Orders.

At the initial court appearance, the court may enter a standing order on AOC-237, Status Quo Order, which may include the following:

- (a) Neither party shall, except as necessary to pay reasonable living expenses, incur unreasonable debt, sell, encumber, gift, bequeath or in any manner transfer, convey or dissipate any property, cash, stocks or other assets currently in their possession or in the control of another person, company, legal entity or family member without permission of the court or an agreed order signed by both parties or their attorneys.
- (b) Neither party shall allow the cancellation or lapse of any health, life, automobile, casualty or disability insurance currently covering

themselves or a family member or change the named beneficiaries on such policies prior to receiving permission of the court or filing an agreed order signed by both parties or their attorneys.

(6) Case Management Conference.

- (a) After the initial court appearance and entry of any status quo or pendente lite order, or by agreement at any time, the parties may be ordered to mediate any issues before further proceedings.
- (b) If the parties have been unable to resolve all issues in mediation, they shall within 10 days obtain from the court a date for a case management conference.
- (c) If the case is not mediated or mediation is delayed for good cause shown, or mediation cannot be required due to domestic violence, the conference shall be scheduled within 60 days following service of the petition upon the respondent.
- (d) Both parties and their counsel shall attend the conference, unless otherwise ordered by the court.
- (e) Each party shall file the following documents at least seven days prior to the conference:
 - (i) Any related motions; and
 - (ii) Any stipulations or agreements reached.
- (f) In the event of failure of a party or parties to appear at the conference, the court may, in accordance with its order, conduct a hearing in which proof may be taken or the case dismissed, as the court may determine appropriate.

(7) Trial.

The trial shall not be continued except as otherwise ordered for good cause shown on the record.

(8) Temporary Motions.

- (a) Any ex parte motion shall be accompanied by a supporting affidavit sufficient to state grounds for injunctive relief, and if granted, shall be set for hearing with all parties at the earliest available date.
- (b) Any pendente lite motions shall be served on the opposing party and set for a hearing before the court unless otherwise agreed to by the parties.

FCRPP 3. Obtaining a Decree of Dissolution.

FCRPP 3 shall read:

(1) Matters Not Requiring a Hearing.

- (a) If parties reach an agreement on all issues, a decree of dissolution may be obtained without a hearing by filing a motion or agreed order to submit for decree of dissolution of marriage.

- (i) The motion shall contain the following information and attachments:
 - (A) The date of marriage and separation;
 - (B) The date the petition for dissolution was filed;
 - (C) The date the respondent was served or filed an entry of appearance;
 - (D) The dates the verified disclosures were filed unless otherwise waived by the court;
 - (E) If the parties have minor children of the marriage, and if ordered by the court, copies of certificates of completion of divorce education/parenting class by each party;
 - (F) A copy of the separation agreement, if any;
 - (G) A written deposition executed under oath by either party setting forth testimony required at a hearing;
 - (H) A written waiver of the right to a hearing executed by both parties;
 - (I) An affidavit stating that the parties have lived apart for sixty (60) days, and that no material change in circumstances has occurred since the taking of the proof;
 - (J) A request for name restoration, if any, in writing;
- (ii) Original copies of (A) through (J) above shall be filed with the clerk in the county of origin, and a courtesy copy shall be submitted to the judge at his or her primary office if it is not located in the court facility where the case file is located; and,
- (iii) A decree shall not be final until the original is signed by the court and entered by the clerk.
- (b) If the parties reach an agreement on individual issues short of settling the entire case, the agreement, signed by both parties, may be submitted directly to the court.

(2) Default cases.

In all cases of default, all applicable requirements in paragraph (1)(a)(i) above, shall apply with the addition of an affidavit with the attorney's certificate that no answer or pleadings have been received by counsel, and that notice of hearing or submission has been served on the opposing party.

(3) Matters Requiring a Hearing.

- (a) If the parties do not reach an agreement on any or all issues, a hearing shall be held, on motion, as set by the court.
- (b) No later than 10 days prior to the hearing, the parties shall file an AOC-239, Final Verified Disclosure Statement, in the record if property matters are in dispute at that hearing.

- (c) A copy of AOC-239, Final Verified Disclosure Statement, together with any supporting documentation, shall be provided to the opposing party's attorney or the pro se party within 30 days of the filing of the motion for hearing, unless the hearing date is set within 30 days of filing the motion for the hearing, upon which disclosure shall be at the order of the court.

(4) Evidence and Exhibits.

- (a) A court-appointed expert's report shall be in lieu of live testimony, unless either party subpoenas the expert to testify or unless the court orders otherwise. The party who subpoenas the expert shall be responsible for paying the expert's fee for appearance at trial, unless otherwise ordered by the court.
- (b) In the trial order, the court shall order parties to exchange the list of exhibits to be submitted at trial. Absent good cause shown, failure to provide an exhibit list may result in the exclusion of such exhibit at trial.
- (c) Originals of depositions, interrogatories or requests for admissions, shall not be filed in the court record unless offered as proof. The attorney who noticed the taking of a deposition, or propounded the interrogatories or requests for admissions, shall be the custodian of the record for the originals, and shall present them when directed by the court or at the request of any party.

(5) Court Ordered Family Counseling or Education.

In all proceedings for the dissolution of marriage in which children of the marriage are minors, or in any custody proceeding, the court may order the parents or custodians and children to participate in counseling or divorce education, which shall be at the expense of the parties.

(6) Post-Decree Litigation.

A fee of \$50.00 shall be paid by the movant in domestic relations cases reopened after six months from the entry of the decree for the purpose of modifying the decree. This does not include motions in 42 U.S.C. Title IV-D cases for child support enforcement. The clerk shall collect any fee upon the filing of the motion, unless the movant is proceeding in forma pauperis.

FCRPP 4. Procedures Before the Domestic Relations Commissioner.

FCRPP 4 shall read:

- (1) In jurisdictions having no family court, the circuit judge may appoint a domestic relations commissioner, who shall serve at the pleasure of the court. The court may refer domestic relations matters under KRS Chapter 403 to the domestic relations commissioner, except for domestic violence

proceedings. Any local rules relating to domestic relations commissioners shall be approved by the Chief Justice and be uniform in all divisions of circuit court within each county of each circuit.

- (2) Each domestic relations commissioner shall have been licensed to practice law for at least eight years at the time of appointment, unless otherwise authorized by the Chief Justice, and shall satisfy the annual continuing legal education minimum requirement with domestic relations law education. Additionally, each domestic relations commissioner shall attend a training program, at least once every two years, which focuses on the dynamics and effects of domestic violence including the availability of community resources, victims' services and reporting requirements. Domestic relations commissioners shall not otherwise engage in the practice of domestic relations law.
- (3) The domestic relations commissioner shall hear all matters promptly. Testimony may be heard orally before the commissioner or by deposition or interrogatory. All actions involving indigents shall be heard by the commissioner without fee. Proceedings before the commissioner shall be recorded by audio or video and a recording log shall be kept. The domestic relations commissioner shall file the recorded hearings and the recording log in the record with the clerk of the court.
- (4) The domestic relations commissioner shall have the authority to make recommendations to the judge regarding motions for temporary orders of custody, support and maintenance. All temporary and final decrees and orders shall be entered by the court upon review of the recommendations of the domestic relations commissioner.
 - (a) Within 10 days after being served with a copy of the commissioner's recommendations, any party may file written objections thereto with the court. After hearing the court may adopt the recommendations, modify them, or reject them in whole or in part, or may receive further evidence or may recommit them for further hearing.
 - (b) The circuit court shall sign any recommended temporary or post-decree order within 10 days after the time for filing exceptions has run. All temporary recommendations of the domestic relations commissioner which become orders of the court shall be without prejudice and subject to the court's de novo review on final hearing.
 - (c) If the parties stipulate that the commissioner's findings of fact shall be final, only questions of law arising upon the recommendations shall thereafter be considered.
 - (d) All final decrees shall be entered by the court within 20 days of submission if no exceptions have been filed. If exceptions have been filed, entry of the final decree shall occur within 10 days of disposition of the exceptions.

- (5) For any case assigned, the domestic relations commissioner shall receive a fee of \$60 per hour, assessed at a rate of \$15.00 for each quarter hour or part thereof. Such fees shall be paid through the office of circuit court clerk to the commissioner and shall be due on the fifth working day following the conclusion of the hearing. No more than \$600 shall be assessed in any case regardless of the number and length of hearings unless recommended by the circuit judge and approved by the Chief Justice for extraordinary circumstances shown. If a case is reopened additional fees totaling not more than \$200 may be assessed. No more than \$15 shall be assessed in any uncontested divorce.
- (6) The compensation of domestic relations commissioners shall be by fee charged upon the parties, or paid out of any fund or subject matter of the action which is in the custody or control of the circuit court. This compensation shall be paid to the circuit court clerk, who shall issue payment to the commissioner.
- (7) All domestic relations commissioners shall be limited in their total personal compensation derived from fees to not more than \$48,000 per annum unless approved by the Chief Justice. Fees in excess of the personal compensation of the commissioner shall be remitted to the Administrative Office of the Courts with the annual accounting for all amounts received.
- (8) The Administrative Office of the Courts shall establish audit and accounting standards, prescribe bookkeeping and accounting practices and procedures, and otherwise perform audits and oversee the financial accounts of domestic relations commissioners. A copy of any audit shall be submitted by the Administrative Office of the Courts to the chief judge of the circuit. In the event that the audit reveals an accounting or other irregularity, a copy shall also be submitted to the Chief Justice.
- (9) The commissioner shall not retain his or her recommendations as security for his or her compensation. When the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, that party may be subject to civil contempt.

FRCPP 5. Maintenance.

FCRPP 5 shall read:

- (1) A motion for temporary maintenance shall be accompanied by copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income, and by an affidavit setting forth movant's monthly expenses and income and the monthly income of the party from whom maintenance is sought.

- (2) The notice of hearing accompanying a motion for temporary maintenance shall contain the following statement: "You must file with the Court, at least 24 hours prior to the time of the hearing, a responsive affidavit setting forth your net monthly income and expenses and attach copies of your last three pay stubs or, if self-employed, proof of your current income."
- (3) **Motions to Modify Maintenance**
 - (a) All motions to modify maintenance shall be accompanied by copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income and by an affidavit setting forth movant's monthly expenses and income and the monthly income of the party against whom the motion is brought, if known.
 - (b) The notice of hearing accompanying a motion to modify maintenance shall contain the following statement: "You must file with the court, at least 24 hours prior to the time of the hearing, copies of your last three pay stubs, or if self-employed, proof of your current income and by an affidavit setting forth your monthly expenses and income."
- (4) All post-decree matters regarding the maintenance issues shall be submitted with a statement of monthly living expenses, supporting documentation of all year to date gross income from all sources, and the most recently filed federal and state income tax returns. The responding party is to similarly file this financial information. All parties shall exchange said information 10 days prior to the hearing. In addition, counsel shall certify, prior to any hearing being held, that reasonable efforts were made to resolve the issues in dispute.

III. CUSTODY, SHARED PARENTING, VISITATION AND SUPPORT.

FCRPP 6. General Provisions.

FCRPP 6 shall read:

- (1) If disputes regarding custody, shared parenting, visitation or support are properly before the court, a parent or custodian may move for, or the court may order, one or more of the following, which may be apportioned at the expense of the parents or custodians:
 - (a) A custody evaluation;
 - (b) Psychological evaluation(s) of a parent or parents or custodians, or child(ren);
 - (c) Family counseling;
 - (d) Mediation;
 - (e) Appointment of a guardian *ad litem*;

- (f) Appointment of such other professional(s) for opinions or advice which the court deems appropriate; or,
 - (g) Such other action deemed appropriate by the court.
- (2) The court or domestic relations commissioner shall conduct a hearing on any motion for temporary custody, time sharing, visitation or child support, within thirty (30) days of the filing of the motion except for good cause stated on the record. Nothing herein prevents the parties from entering into an agreement on these issues.

FCRPP 7. Custody.

FCRPP 7 shall read:

- (1) In any action in which the permanent custody of the child(ren) is in issue, each parent shall, not less than 14 days prior to the day set for hearing, provide the other parent with a list of the names and addresses of every person and a short statement of the subject of their testimony, other than a parent or the child(ren) of the parents, expected to be called as a witness, as well as a list of exhibits to be entered.
- (2) **Residency within Kentucky/Moving to Another Location.**
- (a) If either parent intends to move with the child(ren) from the Commonwealth of Kentucky to another state, or more than 100 miles from the present residence of the child(ren), he or she shall give notice to the other parent at least sixty (60) days prior to such move. Either parent may file a motion for change of custody or time sharing if the other parent is not in agreement with the move, or an agreed order if they are in agreement. No relocation of the children shall occur unless the court enters an order modifying the status quo.
 - (b) If a parent moves from the county where the initial decree or custody order is entered, the court shall apportion the cost of transportation of the child(ren) between the parents, or may assign the entirety of the costs to one parent, considering the economic circumstances of each parent and any other relevant factors.

FCRPP 8. Time-Sharing/Visitation.

FCRPP 8 shall read:

- (1) A parent shall be entitled to time-sharing/visitation as ordered by the court, which may be in accordance with the Model Time-Sharing/Visitation Guidelines, AOC-P-106, unless otherwise agreed to by the parties or ordered by the court.

- (2) Model Time-Sharing/Visitation Guidelines are set forth in AOC-P-106, in Appendix A to these Rules.

FCRPP 9. Support.

FCRPP 9 shall read:

- (1) Once support has been set by the court, it shall continue in full force and effect unless modified by the court, or ended by operation of law.
- (2) An order directing the payment of child support shall be on form AOC-152, Uniform Child Support Order and/or Wage/Benefit Withholding Order for Kentucky Employers, and shall include the following:
 - (a) The amount and frequency of the support payments;
 - (b) That the payment shall be paid:
 - (i) by wage withholding, on form AOC-152, Uniform Child Support Order and/or Wage/Benefit Withholding Order for Kentucky Employers, if applicable; or,
 - (ii) if wage withholding is not applicable, as ordered by the court;
 - (c) The party responsible for medical and other ordered expenses of the child(ren); and,
 - (d) The social security numbers of the parties and child(ren), CR 7.03 notwithstanding.
- (3) If child support is paid by wage withholding, a copy of the wage withholding order shall be served upon the employer and the employee.
- (4) A motion for temporary support shall be accompanied by a completed child support guidelines worksheet and by copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income. The notice of hearing accompanying a motion for temporary support shall contain the following statement: "You must file with the Court, at least 24 hours prior to the time of the hearing, a completed child support guidelines worksheet and copies of your last three pay stubs or, if self-employed, proof of your current income."
- (5) **Motions to Modify Support.**
 - (a) All motions to modify support shall set forth the current child support and shall be accompanied by a completed child support guidelines worksheet and by copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income.
 - (b) The notice of hearing accompanying a motion to modify child support shall contain the following statement: "You must file with

the court, at least 24 hours prior to the time of the hearing, a completed child support guidelines worksheet and copies of your last three pay stubs or, if self-employed, proof of your current income."

- (6) All post-decree matters regarding modification of child support shall be submitted with a child support worksheet, documentation of all year to date gross income from all sources, the most recently filed federal and state income tax returns, verification of the cost of health insurance for the child(ren) only, and verification of child care expenses. The responding party is to similarly file financial information. All parties shall exchange said information 10 days prior to the hearing. In addition counsel shall certify, prior to any hearing being held, that reasonable efforts were made to resolve the issues in dispute.

IV. DOMESTIC VIOLENCE.

FCRPP 10. Issuance of Summons.

FCRPP 10 shall read:

- (1) If an emergency protective order is not issued due to an insufficient relationship as identified in KRS 403.720(2) or (4), or for failure to state an act or threat of domestic violence between the parties, the finding of the insufficient relationship or failure to state an act or threat of domestic violence shall be noted on the petition by the judge, and no summons shall be issued.
- (2) If the relationship is one recognized under KRS 403.720(2) or (4) and there is a finding of domestic violence and abuse and a finding of immediate and present danger, an emergency protective order shall be issued.
- (3) If there is no finding of an immediate and present danger of domestic violence and abuse, when the relationship is one recognized under KRS 403.720(2) or (4), but the court determines that domestic violence and abuse exists, a summons shall be issued and a hearing shall be held to determine if a domestic violence order should be issued. Any finding at the hearing shall constitute an appealable order.

FCRPP 11. Contempt Proceedings.

FCRPP 11 shall read:

- (1) No petitioner shall be held in contempt for failure to appear at a domestic violence hearing or for failing to prosecute a civil or criminal contempt violation of a protective order except for good cause shown on the record. Failure to appear may result in denial of the petition.
- (2) When the court conducts contempt proceedings in domestic violence actions, the party subject to contempt shall be represented by counsel, unless waived, and an attorney shall be appointed by the court if the party qualifies as an indigent.

FCRPP 12. Reissuance of Emergency Protective Order Upon Transfer to Another Circuit.

FCRPP 12 shall read:

When the local domestic violence protocol requires that a case be transferred to another circuit due to a pending dissolution case, an emergency protective order shall continue and the summons shall be re-issued by the initiating court, pursuant to KRS 403.740(4), for a period not to exceed 14 days if service has not been made on the adverse party by the date of transfer, or as the court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed in the court of transfer.

FCRPP 13. Domestic Violence Protocols.

FCRPP 13 shall read:

- (1) Domestic violence cases shall be conducted according to the local domestic violence protocol.
- (2) The court shall not limit or restrict a victim's access to seek a protective order for domestic violence.
- (3) The court shall provide 24-hour access to protection from domestic violence.
- (4) Domestic violence cases shall retain the domestic violence case file number even if heard with another matter.
- (5) The court shall establish schedules for domestic violence hearings and shall provide them to anyone authorized to verify domestic violence petitions.

- (6) The court shall inform the respondent regarding the purchase of a firearm, and the surrender of same, in compliance with 18 U.S.C. Section 922(g)(8), during the pendency of an emergency protective order or domestic violence order, and shall inform the respondent regarding the confiscation, retention and return of firearms.

V. PATERNITY ACTIONS.

FCRPP 14. Paternity Reopenings.

FCRPP 14 shall read:

- (1) A fee of \$50.00 shall be paid by the movant in paternity cases reopened after six (6) months from the entry of the paternity judgment for the purpose of modifying any support, custody or visitation ordered. This does not include motions in 42 U.S.C. Title IV-D cases for child support enforcement. The clerk shall collect any fee upon the filing of the motion, unless the movant is proceeding in forma pauperis.
- (2) Nothing in Rule 14(1) above shall preclude the district court from declining jurisdiction on custody, visitation or support and referring the action to the circuit court; nor shall Rule 14(1) preclude an action for custody, visitation or support from being filed in the circuit court by a party after the entry of a judgment of paternity in district court. In either event the appropriate filing fee shall be paid by the moving party, unless the movant is proceeding in forma pauperis.
- (3) In family court jurisdictions nothing in Rule 14(1) above shall preclude the family court judge from transferring the custody, visitation and support matters in a paternity action to the custody, visitation and support docket. Such a transfer shall require the court to order that the appropriate filing fee be paid by the moving party, unless the movant is proceeding in forma pauperis.

FCRPP 15. Genetic Testing.

FCRPP 15 shall read:

In a paternity action, the court may order the mother, child and the putative father to submit to genetic tests as follows:

- (1) In a case in which paternity is denied or in which the parties request genetic testing, on motion made by any party, a pretrial order shall be entered by the court forthwith which requires both parties and the child to

submit to genetic tests in accordance with KRS 406.081 or 406.091 unless an agreed order is entered.

- (2) Within 30 days of receipt of the genetic report, the petitioner shall file the original report with the court in support of a motion to dismiss, a motion for trial or a motion for summary judgment. This does not preclude prehearing conferencing in the interim which may extend the 30 days by agreement or resolve the issues.
- (3) In those cases in which the genetic test report excludes the defendant from the paternity of the child, the court, after the expiration of 30 days from the date of the filing of the exclusionary report, shall enter an order of dismissal in favor of the defendant unless a motion for additional testing pursuant to KRS 406.091 is filed prior to the expiration of the 30 days.

VI. DEPENDENCY, NEGLECT OR ABUSE.

FCRPP 16. Orders in Dependency, Neglect or Abuse Actions.

FCRPP 16 shall read:

To the extent not otherwise specified, any order entered in a dependency or neglect or abuse action shall be on the appropriate Administrative Office of the Courts forms.

FCRPP 17. Judicial Notice in Dependency, Neglect or Abuse Actions.

FCRPP 17 shall read:

In making any determinations with regard to a child in a dependency or neglect or abuse action, the court may consider the findings of fact and court orders from any other court proceeding in any other court file involving the child or the child's parents or the person exercising custodial control or supervision, if the court is aware of such proceedings. To the extent that the court relies on such, the court shall include a copy of that material in the record.

FCRPP 18. Service.

FCRPP 18 shall read:

- (1) A copy of the petition and summons, and an emergency custody order, if any, shall be served upon parents or persons exercising custodial control or supervision or who have been awarded legal custody by a court or claims a right to legal custody under the law of this state. It may be

served by any person authorized to serve process except the state child protective service agency.

- (2) A notice and statement of the rights and a blank affidavit of indigency, utilizing AOC-DNA-2.2, Notice of Emergency Removal, and AOC-DNA-11, Financial Statement, Affidavit of Indigence, Request for Counsel and Order, shall be served with the emergency custody order.

FCRPP 19. Emergency Custody Orders in Dependency, Neglect or Abuse Actions.

FCRPP 19 shall read:

- (1) Any request for an emergency custody order in a dependency, neglect or abuse case shall be in writing and shall be accompanied by an AOC-DNA-2.1, Affidavit for Emergency Custody Order, alleging dependency, or neglect or abuse, and shall be presented to the judge with any other documentation presented at the time of the filing of the request.
- (2) The person seeking the emergency custody order shall indicate on the affidavit whether there are other proceedings pending, or any orders of custody, related to the child in the Commonwealth or any other state.
- (3) The emergency custody order shall be on AOC-DNA-2, Emergency Custody Order. In no event shall a child be removed pursuant to KRS 620.060 only on a verbal order.
 - (a) Upon issuance of an emergency custody order by the judge, the person seeking the emergency custody order shall file the emergency custody order and the affidavit with the clerk no later than the close of the next work day and the clerk shall assign a case number.
 - (b) If not filed with the emergency custody order, a petition shall be filed with the clerk within 72 hours of taking the child into custody in the same case file as the emergency custody order and affidavit.
 - (c) The court may, after issuing an emergency custody order, transfer the case for forum non conveniens to the county where the dependency, abuse or neglect is alleged to have occurred and shall notify the court to which the case is being transferred, upon issuance of the transfer order.

FCRPP 20. Petition.

FCRPP 20 shall read:

- (1) A petition pursuant to KRS Chapter 620 shall be filed on AOC-DNA-1, Dependency Neglect or Abuse Petition. In proceedings involving siblings,

separate petitions shall be filed for each child and individual case numbers shall be assigned by the clerk of the court, but all siblings' files shall be assigned to the same judge.

- (2) When a petition is filed a copy shall be mailed or provided by the clerk to the parents or other person exercising custodial control or supervision, the state child protective service agency, the county attorney, any guardian *ad litem*, and any counsel of record, no later than the business day following the filing of the petition.

FCRPP 21. Notice of Temporary Removal Hearing.

FCRPP 21 shall read:

- (1) The clerk shall provide notification of the temporary removal hearing to the parents or other person exercising custodial control or supervision, county attorney, the state child protective service agency, any guardian *ad litem* and any counsel of record.
- (2) The order entered at the hearing shall be on AOC-DNA-3, Order-Temporary Removal Hearing.

FCRPP 22. Orders from Hearings.

FCRPP 22 shall read:

- (1) Adjudication Hearing.
The order entered at the hearing shall be on AOC-DNA-4, Order-Adjudication Hearing.
- (2) Disposition Hearing.
The order entered at the hearing shall be on AOC-DNA-5, Order-Disposition Hearing
- (3) Permanency Hearing.
The order entered at the hearing shall be on AOC-DNA-6, Order-Disposition Hearing.
- (4) Permanent Custody Order.
Any order of permanent custody entered pursuant to KRS 620.027 shall be on AOC-DNA-9, Order-Permanent Custody.

FCRPP 23. Continuances.

FCRPP 23 shall read:

If the court grants an extension of time or a continuance it shall make written or oral findings on the record that the continuance is necessary in the best interest of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

FCRPP 24. Dismissal.

FCRPP 24 shall read:

Once filed, a petition shall be dismissed only upon court order.

FCRPP 25. Transfer.

FCRPP 25 shall read:

Cases shall not be transferred from one county to another prior to adjudication except on a specific finding of improper venue or forum nonconviens.

FCRPP 26. Appearances.

FCRPP 26 shall read:

Any attorney appearing on behalf of a party in a dependency, neglect or abuse action shall file a written entry of appearance. An attorney shall not withdraw from representation except upon motion to withdraw granted by the court.

FCRPP 27. Records and Transcripts.

FCRPP 27 shall read:

- (1) An electronic or stenographic record of interviews with children, including a recording of any in-chambers proceedings, shall be filed under seal with the clerk and may be made available to the parties or their counsel on motion and written order of the court.
- (2) In courts that have more than one county in their jurisdiction any recordings made in a county other than where the action is filed shall be delivered to the clerk of the county where the action is filed by the court ordering the hearing.

FCRPP 28. Reports.

FCRPP 28 shall read:

Any dispositional report shall be filed three days prior to a dispositional hearing on AOC-DNA-12, Dependency, Neglect or Abuse Dispositional Report.

FCRPP 29. Case Plan.

FCRPP 29 shall read:

The court shall require the following to be filed in the court record and provided to all parties:

- (1) The out of home case plan;
- (2) Any visitation agreement for the case plan or the case permanency plan;
and,
- (3) Any prevention plan or safety plan developed by the child protective service agency.

FCRPP 30. Permanent Placement Review.

FCRPP 30 shall read:

In addition to the annual permanency hearing mandated by KRS 610.125, the court shall conduct a permanency progress review no later than six months after a child is placed in foster care, in the home of a non-custodial parent, or other person or agency, when that child was sixteen years of age or younger at the time of the filing of a dependency, neglect or abuse petition.

FCRPP 31. New Action.

FCRPP 31 shall read:

Any new allegation or request for removal after a child has achieved permanency shall be filed as a new action.

VII. ADOPTION AND TERMINATION OF PARENTAL RIGHTS.

FCRPP 32. Venue and Petition.

FCRPP 32 shall read:

(1) Venue.

When filed in the same county in which a KRS Chapter 620 proceeding has been held, a proceeding under KRS Chapter 625 shall be assigned to the same family court division that heard the KRS Chapter 620 action. Otherwise, venue shall proceed according to KRS 625.050(4).

(2) Petition.

- (a) A separate petition shall be filed for each child and individual case numbers shall be assigned by the clerk of the court in proceedings filed pursuant to KRS Chapter 625, and in the case of siblings, shall be heard by the same judge.
- (b) Every petition in an adoption or termination of parental rights action shall include the case number of any underlying juvenile case, specifically dependency, neglect or abuse or termination of parental rights cases, and shall include the name of any guardian *ad litem* previously appointed.

FCRPP 33. Adoption.

FCRPP 33 shall read:

- (1) No request for final hearing shall be made prior to the filing of the state child protective service agency report pursuant to KRS 199.510, and the guardian *ad litem* report, if any, pursuant to KRS 199.515.
- (2) In the event of an uncontested adoption, a hearing shall be held within 30 days of the filing of a request for a final hearing.
- (3) A continuance of any final hearing date shall not be granted except upon good cause shown.

FCRPP 34. Involuntary Termination.

FCRPP 34 shall read:

- (1) Immediately upon the filing of any petition for involuntary termination of parental rights, the petitioner shall obtain a pretrial date. In the event the parents are not served prior to the pretrial date, the pretrial date shall be used as a case status review to expedite the proceeding.

- (2) A continuance of any final hearing date shall not be granted except upon good cause shown.

FCRPP 35. Orders Terminating Parental Rights.

FCRPP 35 shall read:

The clerk of the court shall send two certified copies of the order terminating parental rights to the state child protective agency. The prospective adoptive parent or his or her attorney, if any, may obtain a certified copy of the order terminating parental rights from the state child protective agency to attach to the adoption petition.

FCRPP 36. Post-Termination of Parental Rights Review.

FCRPP 36 shall read:

If an order terminating parental rights is entered, there shall be a review hearing conducted 90 days from the date of the entry of the order of termination of parental rights and at least annually thereafter for the purpose of reviewing progress toward finalization of placement or adoption for the child.

VIII. STATUS OFFENDERS.

FCRPP 37. Review.

FCRPP 37 shall read:

At any time during a status offense action, the court on its own motion, or on motion of any interested person, may determine whether a status matter is more appropriate as a KRS Chapter 620 proceeding. A referral may be made to the state child protective service agency, or upon motion, the court may amend the petition pursuant to KRS 610.010(13) and order it served, or a new petition may be filed.

FCRPP 38. Interstate Compact on Placement of Children.

FCRPP 38 shall read:

Pursuant to KRS Chapter 615, the child shall be presented forthwith to the court without formal petition. The court shall utilize the forms provided pursuant to the Interstate Compact.

FCRPP 39. Diversion.

FCRPP 39 shall read:

Pursuant to KRS 610.030, if the court designated worker determines that a status offense complaint meets the criteria for diversion and a diversion agreement is reached, a petition shall not be filed. Upon review of the diversion agreement, the court on its own motion, or upon written request to the court by the county attorney, may refer the complaint for formal hearing

FCRPP 40. Petition.

FCRPP 40 shall read:

- (1) Every petition shall be accompanied by the AOC-JW-40, Preliminary Inquiry Formal/Informal Processing Criteria and Recommendations; and where diversion has been attempted pursuant to KRS 630.050, shall also include an AOC-40.1, Unsuccessful Diversion Agreement, which includes preliminary intake inquiry findings.
- (2) A habitual truancy petition shall be accompanied by AOC-JV-41, Affidavit and Truancy Evaluation Form in compliance with KRS 159.140.
- (3) A beyond control of school petition shall be accompanied by AOC-JV-38.1, Affidavit and Beyond Control of School Evaluation Form.
- (4) A beyond control of parent petition shall be accompanied by AOC-JV-38, Affidavit and Beyond Control of Parent Evaluation Form.
- (5) A habitual runaway petition shall be accompanied by the AOC-JW-39, Pre-Adjudicative Detention Criteria, with attachments.

FCRPP 41. Summons.

FCRPP 41 shall read:

Upon the filing of the petition, the clerk shall issue a summons to the parent(s) or other person exercising custodial control or supervision of the child, setting a date for initial appearance as directed by the presiding judge.

FCRPP 42. Proceedings.

FCRPP 42 shall read:

- (1) Pursuant to KRS 610.060, the judge shall explain to the child on the record his or her rights and the charge, and shall utilize AOC-JV-49, Notice of Juvenile Rights and Consequences for Status Offenders.
- (2) A public advocate shall be appointed for the child unless otherwise waived on the record by obtaining private counsel. The court may place the child on terms which address the child's alleged behavior(s), and may order participation in a service, program or local resource to assist the child.
- (3) A pretrial conference may be held in the court's discretion.
- (4) For disposition, the court shall utilize, AOC-JV-36, Juvenile Status Offender Order, to order terms, services, programs and/or resources to address the needs of the child and family pursuant to KRS 630.120(5). These orders may not require an involuntary drug screen of the parent(s) or other person exercising custodial control or supervision in the status offense case. The court may also adopt recommendations in the dispositional report. For a child who is committed to the state child protective service agency, the court shall also utilize the AOC-JV-31, Juvenile Status or Delinquency Disposition.

FCRPP 43. Informal Adjustments.

FCRPP 43 shall read:

- (1) For any status offender petition resolved by an informal adjustment as defined by KRS 600.020(31), unless explicitly stated otherwise, the terms of the informal adjustment shall remain in effect for a period not to exceed one year or until the child's eighteenth birthday, whichever comes first.
- (2) On notice of a violation of the terms of an informal adjustment to the county attorney, and motion filed with the court and noticed to the interested parties, the court shall re-docket the case, set aside the informal adjustment, and reinstate the original petition upon a showing that the violation could not be remedied without court intervention.
- (3) In the event that the alleged violation of the terms of the informal adjustment would constitute grounds for an original petition the county attorney may move to file an amended petition or file a new petition after consulting with the case worker and the family involved.

FCRPP 44. Detention of Status Offenders.

FCRPP 44 shall read:

- (1) Pursuant to KRS 630.100, no status offender shall be placed in secure detention unless:

 - (a) The offender is alleged to be an habitual runaway; or,
 - (b) The offender is alleged to be in contempt of a valid court order entered on AOC-JV-36, Juvenile Status Offender Order; or a finding of contempt of court has been entered in a formal court proceeding and a valid court order has been entered on AOC-JV-36, Juvenile Status Offender Order.
- (2) Any status offender appearing before the court shall be provided a public advocate or shall be provided the opportunity to retain private counsel.
- (3) Release of a child in detention to non-secure alternatives may be to:

 - (a) The child's parents or legal guardians; or
 - (b) The state child protective service agency if the child is committed to that agency; or
 - (c) The state juvenile justice agency for alternative detention services, if the child qualifies for such a placement; or
 - (d) A non-secure crisis or other mental health unit/facility.
- (4) If the parents or legal guardians are unavailable or unwilling to accept the child and there is no other alternative under Section (3) above:

 - (a) Another responsible adult relative or other interested adult with an established relationship with the child, including the person who may have been exercising custodial control or supervision but does not have actual legal custody, shall be contacted as directed by the presiding judge and the child released to his/her care; or
 - (b) The child shall be placed in an alternative placement, with possible referral to the state child protective service agency.
- (5) No child shall be detained for more than twenty-four (24) hours in secure detention without a hearing before the court within that twenty-four (24) hour period of the detainment, exclusive of weekends and holidays. Each court shall establish a local protocol to assure that the hearing is scheduled within twenty-four (24) hours, exclusive of weekends and holidays.
- (6) A judge shall conduct a due process hearing prior to detaining a child in a secure detention facility for contempt and shall consider any alternatives to a secure detention placement, and other alternatives identified in agency reports submitted within 48 hours pursuant to KRS 610.265(3)(d)(3). If the court has determined by findings on the record

that no less restrictive alternatives are available or appropriate, then the child may be securely detained. Any such court order shall indicate the length of detainment.

IX. APPENDIX A MODEL TIME-SHARING/VISITATION GUIDELINES.

Appendix A shall read:

Appendix A

Model Time-Sharing/Visitation Guidelines

The following schedules are suggested as **guidelines** for the parents and the court in establishing time-sharing/visitation schedules. Each case will present unique facts or circumstances which shall be considered by the court in establishing a time-sharing/visitation schedule and **the final schedule established by the court or agreed to by the parents may or may not be what these guidelines suggest.**

1. The time-sharing/visitation schedule set by the court for holidays, school breaks and summer break should control over regularly scheduled time-sharing/visitation time, even if this allows successive time-sharing/visitation periods.
2. The parent exercising time-sharing/visitation should be responsible for timely picking up the child(ren) at the beginning of the time-sharing/visitation period and returning the child(ren) in a timely manner at the end of the time-sharing/visitation period.
3. Times in a time-sharing/visitation schedule should be set in the time zone where the child primarily resides.
4. For time-sharing/visitation times pertaining to school holidays, whether in a formal school or home-schooled, the school holidays where the child(ren) primarily resides should apply.
5. Each parent should provide to the other parent contact numbers and addresses (unless a domestic violence order is in effect) where the child(ren) can be located during their scheduled time-sharing/visitation time.
6. The parent exercising time-sharing/visitation should be given a minimum of every other weekend as time-sharing/visitation time with the child(ren) and one midweek overnight time-sharing/visitation. The parent having such time-sharing/visitation should be responsible for delivering the child(ren) to school, child care, or the other parent's home as specifically ordered by the court or agreed to by the parents.
7. Holidays.
 - a. If a holiday is celebrated on a Monday following a parent's regularly scheduled time-sharing/visitation, then that parent should be

permitted to extend parenting time until 6:00 p.m. on the holiday, unless the parents agree otherwise.

b. Other holidays.

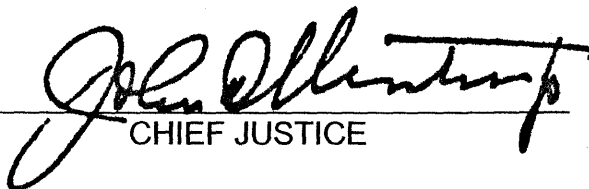
(i) Parent exercising time-sharing/visitation.

- 1) During the first full year after divorce/custody proceedings have been filed, the non-residential parent should have time-sharing/visitation scheduled as follows:
 - a) New Year's Day and July 4th from 8:00 a.m. until 6:00 p.m.
 - b) Thanksgiving, beginning at 6:00 p.m. the day school ends until 3:00 p.m. Thanksgiving Day.
 - c) Christmas/Winter Break, beginning at 6:00 p.m. the day school ends until noon on December 25.
 - d) Holidays not listed that are of special interest to the family should be assigned to the non-residential parent in time amounts similar to those in a), b) and c) above.
- 2) Holiday time not scheduled above to the parent exercising time-sharing/visitation should be with the other parent.
- 3) Mother's Day and Father's Day, regardless of any conflict with the above proposed schedule, should be spent with the appropriate parent from 8:00 a.m. until 6:00 p.m.
- 4) Fall Break or Spring Break, as allowed by the child(ren)'s school calendar, should be scheduled for the parent with whom the child(ren) primarily resides in the first full year after the divorce/custody proceedings are filed from 6:00 p.m. the day school ends until 6:00 p.m. the following Friday. If school breaks are longer than one week due to the school schedule, the parent with whom the child(ren) primarily resides should be scheduled for the first half of the break and the other parent should be scheduled for the last half.
- 5) Summer Break should be scheduled to allow the parent exercising time-sharing/visitation a minimum of two periods of two consecutive weeks during the Summer Break. Each parent should provide the time periods he or she desires to the other parent before the end of the school year, or at least 60 days in advance of the requested time. If a child(ren) must attend summer school in order to pass to the next grade, summer time-sharing/visitation should not prevent school time.

- 6) Birthdays: Unless the birthday falls on a regularly scheduled time-sharing/visitation day, the parent exercising time-sharing/visitation should be scheduled for birthday time from 5:00 p.m. until 8:00 p.m. If it is a regular day of the parent exercising time-sharing/visitation where the child(ren) does not primarily reside, the other parent should have birthday time from 5:00 p.m. until 8:00 p.m.
- (ii) Alternating years: For each year thereafter, the time-sharing/visitation set out above should alternate between the parent with whom the child(ren) primarily resides and the parent exercising time-sharing/visitation.
8. Waiting/Tardiness/Cancellations.
- a. In the event either parent will be more than 30 minutes late, due to reasonable unforeseen circumstances, to pick up the child(ren), he or she should provide direct notice to the other parent or a designated third party and make suitable arrangements for exchange of the child(ren).
- b. If time-sharing/visitation is missed through no fault of the parent, and reasonable notice has been given, that time should be made up, if reasonable to do so.
- c. If the child(ren) is ill, the parent who has the child should give 24-hour notice, if possible, to allow for appropriate plans to be made.
9. Transportation: The parents should transport the child(ren) in a safe manner, which includes utilizing the appropriate child restraint systems and not driving under the influence of intoxicants.

All sitting. All concur.

ENTERED: November 3, 2010.


CHIEF JUSTICE